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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,630	07/07/2003	Robert Lawrence Fair	EMCCOR P08AUSD1	7822
20210	7590	02/07/2007		
DAVIS & BUJOLD, P.L.L.C. 112 PLEASANT STREET CONCORD, NH 03301			EXAMINER MASKULINSKI, MICHAEL C	
			ART UNIT	PAPER NUMBER
			2113	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/07/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/614,630

**Applicant(s)**

FAIR, ROBERT LAWRENCE

**Examiner**

Michael C. Maskulinski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## Final Office Action

### Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,718,481 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other because claim(s) 1 of U.S. Patent No. 6,718,481 B1 contain(s) every element of claim(s) 1 of the instant application and as such anticipate(s) claim(s) 1 of the instant application.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. *In re Longi*, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting

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because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). “ ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis, U.S. Patent 5,768,501.

Referring to claim 1:

a. In column 6, lines 8-25, Lewis discloses a topographical view of a network that shows the lowest level, e.g. cables and higher levels, e.g. networks, LANs, rooms (a plurality of domains structured as an integrated, cooperative cluster of domains including hierarchically related domains). Further, in column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (and peer related domains). In column 1,

lines 35-65, Lewis discloses each domain performing one or more functions supporting the services provided by the system resource.

b. In column 5, lines 53-57, Lewis discloses a topological display of the network that shows hierarchical relationships between network devices hierarchically related domains include a higher level domain and a lower level domain respectively performing higher and lower level operations of one or more related functions supporting the services provided by the system resource.

c. In column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (peer related domains include parallel domains performing related operations in mutual support of one or more related functions supporting the services provided by the system resource)

d. In column 8, lines 12-19, Lewis discloses inter-domain monitoring and alarms and an example of an inter-domain alarm as a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router (a domain having a peer related domain monitors the peer related domain and assumes the operations performed by the peer domain upon detecting a failure in the peer related domain).

Referring to claim 2, in column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (peer related domains performing related operations in mutual support of one or more related functions supporting the services provided by the system resource).

***Response to Arguments***

5. Applicant's arguments filed August 1, 2003 have been fully considered but they are not persuasive.

6. On page 5, under the section REMARKS, the Applicant argues, "the Lewis '501 system is not comprised of hierarchical and peer domains but in fact only a single layer of domains, designated as Domains 10." The Examiner respectfully disagrees. In column 6, lines 8-25, Lewis discloses a topographical view of a network that shows the lowest level, e.g. cables and higher levels, e.g. networks, LANs, rooms (a plurality of domains structured as an integrated, cooperative cluster of domains including hierarchically related domains). Further, in column 1, lines 47-48, Lewis discloses a domain type that is a grouping based upon functional characteristics of network resources (and peer related domains). In column 1, lines 35-65, Lewis discloses each domain performing one or more functions supporting the services provided by the system resource.

7. On pages 6-7, under the section REMARKS, the Applicant argues, "the Lewis '501 system is still further fundamentally distinguished from the present invention in that the Lewis '501 system is not comprised of hierarchical and peer domains." The Applicant then goes on to describe the passing of alarm signals up and down a

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hierarchy to show that at most Lewis discloses only hierarchical domains. The Examiner respectfully disagrees with the Applicant's interpretation of the system of Lewis. The Examiner would appreciate it if the Applicant would provide where, specifically, the citations relied upon are taught in Lewis. Further, the Applicant's arguments are only concerned about the hierarchical handling and correlation of alarms. This has nothing to do with whether or not peer related and hierarchical domains exist in the system of Lewis. The claims only mention having peer related and hierarchical domains and not how alarms are handled. As shown above, Lewis discloses peer related and hierarchical domains and how alarms are handled is irrelevant to this.

8. On page 7, under the section REMARKS, the Applicant argues, "It is therefore clear that all relationships between elements in the Lewis '501 system are solely hierarchical, that is, communications and operations pass only between superior and subordinate elements, and there are no communications or interoperations between peer elements, and no peer elements within the definition of peer element as recited in claim 1." The Examiner respectfully disagrees. The Examiner cannot find where in the claim language it is stated that there are communications or interoperations between peer elements. In fact all that is claimed is that the peer related domains are parallel which would mean that there are never any interaction between them. However, for sake of argument the Examiner directs the Applicant to column 1, lines 47-48 of Lewis.

9. On pages, 7-8, under the section REMARKS, the Applicant argues, "the elements on a comparable functional level, such as 'domains' 10, operate independently and separately from one another rather than cooperatively or in mutual

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support of one another.” The Examiner disagrees for at least the reasons and the rejection above.

10. On page 8, under the section REMARKS, the Applicant argues, “none of the elements in the Lewis ‘501 system, and in particular none of the elements on a common functional level, such as ‘domains’ 10, ‘monitors the peer related domain and assumes the operations performed by the peer domain upon detecting a failure in the peer related domain.’” The Applicant then goes on to argue that alarm conditions are passed upward to the next hierarchically superior domain. The Examiner would like to point out that passing of alarm conditions upward has no relevance to monitoring peer related domains and assuming the operations performed by the peer domain upon detecting a failure in the peer related domain. Further, in column 8, lines 12-19, Lewis discloses inter-domain monitoring and alarms and an example of an inter-domain alarm as a notification that a router in domain A may be faulty or degraded, and thus may affect the throughput or other performance characteristics of domain B. An example of a command is a command to re-route data from domain A intended for domain B through a different router than the faulty or degraded router.

### ***Conclusion***

11. This is a divisional of applicant's earlier Application No. 09/580,187. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL**



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even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Maskulinski whose telephone number is 571-272-3649. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on 571-272-3645. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael C Maskulinski  
Examiner  
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